

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Sri. Mahesh. M., Additional Munsiff

Tuesday, the 7th day of January, 2025 /17th Pousham, 1946.

IA No.04/2024 in O.S. No. 562/2024

(Filed on 06.11.2024)

Petitioner/ Plaintiff:-

Komala, aged 74, W/o Ramachandran,
Korthussery, Kanichukulangara P.O, Cherthala.
By Adv. K.A Easwariamma

Counter Petitioners/Defendants :-

1. Kanichukulangara Devaswom
Kanichukulangara P.O, represented by its Manager.
2. Kanichukulangara Devaswom
Kanichukulangara P.O, represented by its Secretary.
3. Kanichukulangara Devaswom
Kanichukulangara P.O, represented by its Treasurer.
**By Adv.C.H Chandrabhanu &
Adv.Dhanya Krishnakumar**

This petition having been finally heard on 19.12.2024 and the court on 07.01.2025 passed the following :-

ORDER

This is a petition filed under Order 39 Rules 1 and 2 r/w Sec.94 and 151 of the Code of Civil Procedure, 1908. The plaintiff filed this petition seeking issuance of a direction to the defendants to permit her to take part in the Chikkara ritual conducted at the Kanichukulangara Temple in February 2025.

2. Petition averments in brief are as follows:

The petitioner herein is the plaintiff in the above numbered suit. The petitioner resides in the plaint schedule property comprised in Resurvey No. 381/6, of Mararikulam village having an extent of 26.80 ares. The petitioner and her family have been living on this property for over 100 years. The temple priest and trustee of the Devaswom, named Aadi, who had twin names Aadikkutty, was the head of the family named Kumarathussery. The family assets were donated for the benefit and progress of the temple, granting the temple ownership rights. The income from these properties has continued to fund the temple's daily activities. Members of the Kumarathusherry family were regular members of the public assembly at the Kanichukulangara temple. The name Kumarathusherry eventually evolved to Korthusherry over time. Following the agreement given by Aadikkutty, the female heirs, including the petitioner, have continued to reside on the plaint schedule property. For the past 25 years, while residing on this property, the petitioner have constructed 25 rooms adjacent to her house and rented them out to Chikara children as part of the Chikkara ritual conducted at Kanichukulangara temple. In February 2024, when the Chikara children were denied permission to use petitioner's rooms in her building by the Devaswom, the petitioner had to refund the booking fees collected in 2023 to the people who had pre-booked. Consequently, the petitioner incurred a loss of approximately rupees eight lakhs due to the arrangements and other costs related to the festival in February 2024. Booking is ongoing and will be closed within two weeks. If the temple authorities do not allow my rooms to be used by the Chikara children this year as well, the petitioner will not be able to repay her debts and will face unavoidable financial loss and distress. Hence this petition is filed to issue an order directing the

temple and its authorities to provide a receipt and permit the use of petitioner's rooms for the Chikara children during the Chikara offering related to the festival in February 2025.

3. The respondents filed objection contending as follows:-

The suit as well as the petition are not at all maintainable. The respondents have not infringed upon or attempted to infringe upon any of the petitioner's lawful rights. Therefore, the injunction as sought under the Specific Relief Act, is neither legally maintainable nor grantable, and there is a legal impediment. Therefore, the interim petition by the plaintiff to direct the defendants to grant permission for seating the Chikara children is not maintainable. The plaint schedule property, dedicated to the deity Kanichukulangara Devi (Kanichukulangara Amma), belongs and will continue to belong to the deity and the Kanichukulangara temple under the administration of the Devaswom. Hence, any fraudulent claims made by the defendant concerning the property cannot be sustained. Any prohibitory orders against the true owner of the plaint schedule property as stated above, or any such orders under the Specific Relief Act, shall not bind the true owner. The respondent and their family reside on the disputed property. The respondent has admitted explicitly that they reside exclusively on the homestead and does not hold any ownership or possession over the remaining 28.80 acres of the disputed listed properties. The temple, the properties under it, and all its assets, including the plaint schedule property, have been under the supervision and management of Aadikkutty, the priest, and trustee of the Kanichukulangara temple. Based on the agreement numbered as 1583/1098 (ME), where the property was officially granted to the Kanichukulangara temple, all these assets have remained for the benefit and progress of the temple. The claim that the

petitioner and family reside on the disputed property, and have constructed and rented 25 rooms, are false and are therefore refuted. However, a modern multi-storey tourist facilitation center, with 35 rooms and sophisticated amenities, was constructed at a cost of 5.75 crore rupees spent by the Kerala Tourism Department on the northern side of the disputed property. It provides basic facilities, including rooms, for Chikara children. This information about the disputed property, which the defendants possess, was deliberately concealed by the petitioner in the affidavit. The custom of accommodating Chikara children, who act as companions of the deity during the temple festival, within the temple premises for 21 days of observance is an age-old divine ritual maintained at the temple. Due to the inadequate accommodation provisions by the temple Devaswom for these children and their parents, nearby private individuals and institutions, including the petitioner, have been providing the needed facilities at a fee and have housed the children. However, the statement indicates that this has been happening for a long time is false. Year by year, the crowd participating in the ritual has been increasing. Consequently, concerns about the safety, purity, and cleanliness of accommodation for the Chikara children led the Devaswom to ensure the arrangements are legal and above board. As part of these assurances, parents and guardians of the Chikara children must now obtain a prescribed form from the temple Devaswom office, duly fill it, provide details of the homeowner and the house, and have it signed by the homeowner. After implementing the new measures in 2024, children can participate in the offering only after returning the form to the office. This arrangement was made to maintain the sanctity of the offering and ensure the safety of the Chikara children and devotees. The form is provided to the guardians of the Chikara children, and not delivered to the homeowners. As a resident of the homestead on the plaint schedule property, the petitioner has no additional rights or

possession over the said property. However, the petitioner has illegally and against the law constructed three temporary sheds on the property away from the homestead and within the property, constructed unauthorized partitioned rooms, housing Chikara children, and unjustly profiting. One shed was constructed on the eastern side of the homestead near the eastern railway tracks in 2018, and two more sheds south of the homestead were constructed in 2021. These constructions are unauthorized, not mentioned in the schedule of the disputed property, and violate the rights of the deity and the temple under the management of the defendants. The petitioner has made false and illegal claims over the property and has filed Case No. OS 665/2023 in the Cherthala Munsiff court against the defendants without listing these three sheds in the schedule. Given these circumstances, any attempts by the petitioner to gain unauthorized, illegal rights to house Chikara children in these three temporary sheds should be denied and countered by the defendants. If the court directs the defendants to comply, it would place the Chikara children and their relatives in entirely unsafe and undesirable conditions, as the unauthorized and unlawful temporary sheds constructed without the permission or consent of Kerala authorities and the defendants would subject the children to considerable risk during their stay, causing inevitable liability, adverse impacts on the temple's reputation, and considerable damage to the defendants and the temple. The defendants do not know if the petitioner had taken any advance payment unlawfully. However, no one has approached the defendants or the Devaswom office about renting the petitioner's rooms for seating the Chikara children for the offering. The petitioner's claim of an 800,000 rupee loss is also false. Illegally and unlawfully constructed temporary sheds on the defendants' property have no legal standing for such a massive advance payment. Furthermore, the request to permit seating the Chikara children in unsafe unauthorized sheds is illegal. The defendants

also claim the right to have these unauthorized temporary sheds demolished from the disputed property and to take necessary legal actions against the petitioner, making any such direction above invalid. The petitioner does not have a prima facie case. The balance of convenience favors the defendants. There is no legal hardship or loss that would result from not granting the relief sought in the petition. Conversely, granting it would cause unavoidable harm to the defendants. Hence this petition is liable to be dismissed.

4. Heard both sides.

5. The following points are raised for consideration;

1. Whether the plaintiff/petitioner is entitled to get an interim mandatory injunction as prayed for?
2. What is the order?

6. Point No.1:-

The case of the petitioner is that she has been residing on the plaint schedule property for many years. She was renting out the 25 rooms in the property for the purpose of accommodating the Chikkara children. According to the petitioner, the respondent Devaswom is not permitting her to continue with this practice. Therefore, the petitioner seeks a court direction to the respondent Devaswom to allow her to continue renting out the rooms. Admittedly, the petitioner does not have any right over the plaint schedule property. The petitioner concedes that the property was surrendered by her predecessor to the Kanichukulangara temple. Hence, the first matter for analysis is the right allegedly infringed or violated by the respondents. The petitioner has produced documents showing that she and her predecessors have been residing

on the plaint schedule property for a long time. The respondents deny this claim. The current dispute is regarding the petitioner's right to rent out the property for accommodating Chikkara children.

7. Firstly, the Chikkara offering is a ritual performed by children in the Kanichukulangara temple for a period of 21 days. During this period, the children and their guardians are required to reside nearby the temple. The respondent Devaswom has built a facilitation center for accommodating both the children and their parents. This center is within the plaint schedule property. However, the petitioner has not included this center in the plaint description of the property. The facilitation center alone cannot accommodate all individuals performing the ritual. Hence, local residents near the temple provide additional accommodation for these individuals for a fee. The petitioner contends that she has been providing such accommodation to Chikkara children for the past 25 years in the 25 rooms located on the plaint schedule property. However, the petitioner has not presented any evidence before the court to prove this claim. There is no evidence indicating that 25 rooms are located on the property and are ready to be rented out for Chikkara children. At this stage, it is noteworthy that the petitioner has produced a plan for the facilitation center. According to this plan, there are no 25 rooms on the plaint schedule property, as claimed by the petitioner. Only three sheds are seen. Therefore, this court is of the view that the petitioner neither proved the existence of 25 rooms on the plaint schedule property nor proved that she had rented them out to Chikkara children.

8. Regarding the right claimed by the petitioner, there is no vested right available to her to accommodate Chikkara children and their guardians on the plaint schedule property. It is the prerogative of the individuals coming to the temple for rituals to decide where to reside. Neither this court nor the

respondents can compel individuals to reside at a specific place. It is true that a new system introduced this year requires property owners to fill out a form to accommodate pilgrims. The copy of the form has been produced. According to this form, the building number where the pilgrims are staying must be mentioned. It can be inferred that the petitioner's inability to mention such a building number in the provided form is due to the temporary nature of the sheds or rooms claimed to be on the plaint schedule property. Only permanent structures are entitled to be numbered by the authorities. The petitioner's intention is to compel the respondents through a court order to gain permission to accommodate individuals in her temporary sheds and thereby profit. This cannot be allowed, as the court should not be used to grant undue advantage. The respondent Devaswom is handling the temple's administration and their power to issue the disputed form cannot be questioned by the petitioner. Furthermore, the requirement to include the building number in the form is not a violation of any rights of the petitioner. Instead, it is a measure adopted by the respondent to ensure the safety, security, and cleanliness of the pilgrims, which they are duty-bound to do. If the petitioner wishes to accommodate pilgrims on the plaint schedule property, she must comply with the conditions of the prescribed form instead of agitating the matter unnecessarily before a court of law.

9. Another crucial factor is a prior suit filed by the petitioner against the respondent. In that suit, the petitioner's case does not align with the one projected in this petition. The previous suit was filed against the alleged unlawful eviction from the scheduled property. As stated, the petitioner does not have any right over the plaint schedule property, which belongs to the temple. Through this petition the petitioner is seeking the issuance of a direction pertaining to the property which absolutely belongs to the respondent. The right to reside of the

petitioner in the Plaint Schedule Property itself is on the basis of the permission given by her predecessor. Apart from that there is no right for the petitioner over the Plaint Schedule Property. An order of interim mandatory injunction can only be granted when the rights of the petitioner are violated. Here in the case on hand such a right is not seen violated. A direction as sought for by the petitioner cannot be granted because the same will amount to interfering with the administration of the respondent devaswom of the temple. Hence this court is of the view that the petitioner does not have any prima facie case. The claim projected by her is unsubstantiated and with out merits. Hence this point is found against the petitioner.

10. Point No.2:-

In light of the findings in Point No.1 it is found that the petitioner is not entitled to get a relief of interim mandatory injunction. Hence this IA is dismissed.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 7th day of January, 2025.)

Sd/-
MAHESH M.
ADDITIONAL MUNSIFF

APPENDIX :-

Documents produced from the side of the petitioner

1. Registration form of Chikkara Children
2. Advertisement notice issued by the respondents.
3. Certificate issued from Mararikulam North Grama Panchayath.

4. Certificate of residence issued from Mararikulam North Grama Panchayath.
5. Copy of field register
6. Certified copy of order in I.A 1/2023 of OS.665/2023 of Principal Munsiff Court, Cherthala.
7. Photocopy of page No.37 and 38 of Smaranika 2016
8. Notice
9. Photographs (2 in numbers)
10. Ownership certificate issued from Mararikulam North Grama Panchayath dated 28.01.2024.
11. Building age certificate issued from Mararikulam North Grama Panchayath dated 28.01.2024.
12. Copy of plan of facilitation center

Documents produced from the side of the respondents

1. Inauguration Notice of Tourist Facilitation center
2. Tax receipt dated 12.04.2023
3. Copy of Application given by petitioner to Deputy Collector (LR)
4. Copy of Application given by the petitioner to District Collector, Alappuzha.
5. Certified copy of plaint in OS.665/2023 of Munsiff Court, Cherthala.
6. Application given by the petitioner before Kanichukulangara Devaswom dated 25.11.2024.

7. Petition given by the petitioner before Kanichukulangara Devaswom Secretary
8. Copy of objection filed by the respondent before Deputy Collector (LR)

Sd/-
ADDITIONAL MUNSIFF